



**IN THE CIRCUIT COURT OF PIKE COUNTY, MISSOURI
CIRCUIT JUDGE DIVISION**

CHARLES HOUSE, by his Next Friend)
EMILY COOK,)
)
Plaintiff,) Case No. 21PI-CC00047
)
vs.)
)
MICHAEL KELLY WIRTHS and)
USF HOLLAND, LLC,)
)
Defendants.)

PLAINTIFFS' SECOND AMENDED PETITION FOR DAMAGES

Count I

Directed Against Defendant USF Holland, LLC and
Michael Wirths

Plaintiff States:

1. On or about December 22, 2020, Defendant Wirths was operating a 2020 Peterbilt Tractor pulling a trailer on Northbound Highway 61 in Pike County, Missouri.
2. Highway 61 in Pike County Missouri is a four-lane highway with two northbound lanes and two southbound lanes divided by a grassy median.
3. At the above date and place stated, Joshua House was a pedestrian walking or standing in the right lane of the North bound lanes of highway 61.
4. Defendant Wirths was driving the Peterbilt Northbound, in the right lane, on highway 61.
5. As Defendant Wirths, operating the Peterbilt, approached Joshua House, Joshua House was in a position of immediate peril and danger.
6. There was no northbound traffic in front of defendant Wirths as he drove his tractor-trailer northbound.
7. There was no traffic approaching defendant Wirths within 500 feet of his vehicle.
8. There was no traffic approaching defendant Wirths.

9. Defendant Wirths drove the Peterbilt tractor into Joshua House causing Joshua House fatal bodily injuries.

10. The collision between the Peterbilt tractor and Joshua House occurred at approximately 0225 hours.

11. Missouri Highway 61 at the location where the collision occurred is an unlighted highway.

12. It was dark at the time defendant Wirths' tractor struck Joshua House.

13. In the operation of his tractor trailer, Defendant Wirths was negligent in that he failed to use the highest degree of care as the circumstances then and there required in that:

a. Defendant knew, or by the use of the highest degree of care could have known, that there was a reasonable likelihood of a collision with Joshua House in time thereafter to have stopped, or swerved, or slackened speed, or sounded a warning, or slackened speed and swerved, or slackened speed and sounded a warning, or swerved and sounded a warning but defendant failed to do so.

b. He failed to keep a careful lookout for objects or people in the roadway.

c. He failed to perceive the fact that an object or a person was in the roadway having had time to do so.

d. He failed to have the headlights of the tractor on high-beams as required by law.

e. He drove at a speed which made it impossible for him to stop within the range of his visibility.

e. Defendant Wirths knew, or by the use of the highest degree of care could have known that there was a reasonable likelihood of a collision in time thereafter to have stopped, or swerved, or slackened speed, or sounded a warning, or slackened speed and swerved, or slackened speed and sounded a warning, or swerved and sounded a warning but defendant failed to do so.

14. Defendant Wirths was negligent *per se* in that he operated his vehicle on a darkened roadway with his head lamps on low-beam rather than high beam when low beams would not reveal objects or persons on the roadway and in violation of sections 307.060 and 307.070, RSMo.

15. As a result of Defendant Wirths' negligence, Joshua House sustained serious bodily injuries which resulted in his death.
16. Charles House is the biological child of Joshua House and is a person qualified and eligible to bring this lawsuit by next friend under Missouri's Wrongful Death Statute.
17. Joshua House was single at the time of his death and has no other issue.
18. In addition to his child, Charles House, Joshua House is survived by his father Jeff House, 1309 East State Highway 162, Portageville Missouri 63873 and by his mother Lagina Helm, whose address and whereabouts are unknown.
19. At the time Defendant Wirths drove the tractor trailer into Joshua House and killed him, he was employed by Defendant Holland and was operating the Peterbilt Tractor within the scope and course of his employment with Defendant Holland.
20. Plaintiff Charles House has lost the love, support, and consortium of his father as a direct result of Defendant Wirths' negligence as described herein.
21. Plaintiff's damages exceed \$25,000.00
22. Defendant USF Holland is a Limited Liability Corporation with its principal place of business in the state of Michigan.
23. Defendant Wirths is a Missouri resident.
24. Jurisdiction is in Missouri and venue is Pike County Missouri, the county in which the injuries and death from the accident resulted.
Wherefore, Plaintiff prays for damages against the Defendants jointly and severely, in such sums as will adequately compensate him for his loss.

Count II

Directed Against Defendant USF Holland, LLC

25. Plaintiff realleges and incorporates in count II by reference all allegations of Count I.
26. Defendant USF Holland failed to properly train defendant Wirths in the required use of high-beams of the headlights when driving on a dark road.
27. As a direct result of defendant's Wirths' failure to use high beams, he drove defendant USF Holland's tractor into Joshua causing him grievous bodily injury which resulted in his death.

28. Defendant' Hollands failed to properly train its driver, Michael Wirths, in the requirements of Missouri Law and the Missouri Commercial Driver License and law as to when to drive a commercial vehicle at night with high beams and when low beams may be safely used.

29. Defendant Holland's failure to adequately train Michael Wirths on the use of high beams and low beams for driving at night was negligent.

30. Defendant Holland's failure to adequately train Michael Wirths on the use of high beams and low beams when driving at night proximately caused the injuries to and the death of Joshua House.

Wherefore, Plaintiff prays for judgment against defendant USF Holland, LLC on Count II in such sums as will fairly and adequately compensate plaintiff Charles House for the loss of his father.

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CERTIFICATE OF SERVICE

I hereby certify that on November 8, 2022, an electronic copy of the foregoing was sent through the Missouri e-Filing system to counsel of record.

/s/ CHARLES F. JAMES